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24 Attorneys for Defendant City of Tucson

25 **IN THE UNITED STATES DISTRICT COURT**
26 **DISTRICT OF ARIZONA**

27 CARRIE FERRARA CLARK,
28 Plaintiff,
29 v.
30 CITY OF TUCSON,
31 Defendants.

Case No. 4:14-CV-02543-TUCV-CKJ

NOTICE OF APPEAL

Assigned to the Honorable
Cindy K. Jorgenson

32 NOTICE IS HEREBY GIVEN that Defendant City of Tucson (the “City”) hereby
33 appeals to the United States Court of Appeals for the Ninth Circuit from the Clerk’s
34

1 Judgment entered in this action on April 22, 2019 (Doc. 242) and from the Order denying
2 in part the City’s Motion for Summary Judgment, entered on April 25, 2018 (Doc. 131).

3 This Notice is being filed out of an abundance of caution to preserve the City’s
4 appeal rights. The City recognizes that several motions are still pending in this action and
5 that the Court did not enter a “separate document” as a judgment as required by Federal
6 Rule of Civil Procedure 58(a). *See* Fed. R. Civ. P. 58(c); Fed. R. App. P. 4(a)(7)(A)(ii);
7 *Orr v. Plumb*, 884 F.3d 923, 928 (9th Cir. 2018) (stating that a separate document is
8 necessary after a jury returns a special verdict because it must be approved by the trial
9 court). However, the Clerk of the Court entered the jury’s verdict a “Clerk’s Judgment” on
10 April 18, 2019. (Doc. 242). Regardless of the general requirement for a separate judgment
11 signed by the Court, the Clerk’s Judgment may automatically become an appealable
12 judgment 150 days after its entry in the civil docket. Fed. R. Civ. P. 58(c)(2)(B); Fed. R.
13 App. P. 4(a)(7)(A)(ii); *see also Orr*, 884 F.3d at 929-31 (discussing interplay between Rule
14 58 and notice of appeal deadlines). That means the Clerk’s Judgment is deemed entered as
15 of September 16, 2019. The City’s Notice of Appeal must be filed within 30 days of entry
16 of any judgment or order appealed from. Fed. R. App. P. 4(a)(1)(A).

17 The City’s appeal from the Court’s summary judgment order (Doc. 131) is also
18 timely because “[t]he denial of a motion for summary judgment is appealable after the entry
19 of a final judgment.” *Moran v. Aetna Life Ins. Co.*, 872 F.2d 296, 301 (9th Cir. 1989).

20 The City’s filing of this Notice of Appeal does not deprive this Court of jurisdiction
21 to rule on the currently pending post-trial motions. Rather, the Notice of Appeal is treated
22 as effective from the date this Court rules on the last of the pending motions. Fed. R. App.
23 P. 4(a)(4)(B)(i). The City also contemplates the possibility of appeal from the Court’s
24 order(s) on the post-trial motions, and if it chooses to appeal from any of those, it will file
25 an Amended Notice of Appeal. Fed. R. App. P. 4(a)(4)(B)(ii). Obviously, if the Court rules
26 as the City requests on the post-trial motions, an appeal by the City would be moot, and if
27 that occurs the City will withdraw its Notice of Appeal at that time. In the meantime, the
28

1 Court retains jurisdiction to conclude the proceedings and issue orders on the pending
2 motions.

3 DATED this 13th day of September 2019.

4 FARHANG & MEDCOFF

5 By /s/ Robert A. Bernheim

6 Ali J. Farhang
7 Roberto C. Garcia
8 Robert A. Bernheim

Attorneys for Defendant City of Tucson

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on September 13, 2019, I electronically transmitted the attached
11 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
12 Notice of Electronic Filing to the following CM/ECF registrants:

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27 /s/ Jane L. Cebula
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